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## PATENT

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of:	Farina et al	Docket: DCS-9091A
Filed:	August 8, 2001	Group Art Unit: 1743
Serial No.:	09/924,383	Examiner: Unknown

Title: Reagent Container and Canister For Use  
In An Automated Microbiological Analyzer

## AFFADAVIT UNDER 37 CFR 1.131

Commissioner for Patents  
P. O; Box 1450  
Alexandria, VA. 22313-1450

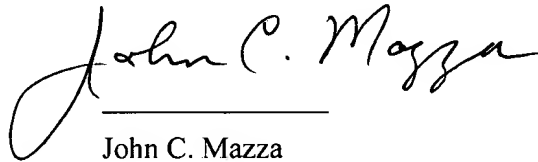
Sir:

The undersigned, being duly sworn, depose and say:

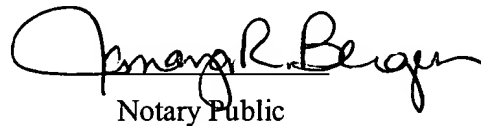
1. We are joint inventors of the patent application identified above claiming the broth container and canister disclosed therein.
2. We understand that this affidavit is intended to overcome a rejection of the above-identified application under 35 USC 102(e) by providing evidence of the fact that the broth container and canister claimed in the above-identified application were reduced to practice and satisfactorily tested for functioning in accord with their intended purpose before April 24, 2001.
3. The following evidence that the broth container and canister were conceived and reduced to practice on or before August 17, 2000, is available by accessing dated CAD files at the Dade Behring facility, Glasgow, Delaware, under "server Mcad1200, file usr2, projects, ramses, broth\_cup, images" as illustrated in the computer screen display image found in Appendix A.

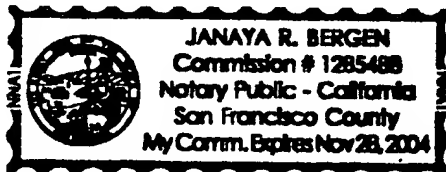
4. The broth container identified in the application by reference numeral 14 in FIGs 11A-D and 12A-B is exactly the container identified in Appendix A as Cup\_a.jpg, Cup\_b.jpg, Cup\_c.jpg, and Cup\_d.jpg, in Paint Shop Pro images dated August 17, 2000.
5. The scope of the as amended claims is commensurate with the features of broth cup 14 as may be seen by comparing the four Paint Shop Pro images identified as Cup\_a.jpg, and Cup\_c.jpg in Appendix B, with the now claimed broth cup features. For clarity, Cup\_b.jpg, and Cup\_d.jpg are identical to Cup\_a.jpg, and Cup\_c.jpg but have a different background.
6. Also seen in Appendix A is a Paint Shop Pro image file identified as “clamp\_assy.jpg” and dated August 8, 2000, and the image corresponding to the “clamp\_assy.jpg” may be seen in Appendix C. This image illustrates how the clamp attaches to the Y-shaped clamping ridges of the broth container. In the specification, page 35, lines, it is explained that “Clamping teeth 109 are sized to fit over the arm portion 252A of the Y-shaped clamping ridges 252 as seen in FIG. 21B and thereby secure broth containers 14 for movement as required within analyzer 10.”
7. Appendix D is a photograph of a test device we developed having an uppermost latch to secure the broth canister as seen in Appendix F and identified in the application by reference numeral 24 in FIG. 14A. The broth canister did function in accordance with its intended use. The test device also included moveable clamping teeth to extract and support broth cups from such a canister holding a stack of broth cups. This clamping action is better seen in the close-up photograph of Appendix E.
8. In August, 2000, we used the test device seen in Appendix D to test the functionality of the Y-shaped clamping ridges of the broth cup, the security of broth cups within the broth canister, the upper latching of the canister and the eject port at the bottom of the canister and the test results were repeatedly successful, thereby demonstrating that the broth container having Y-shaped clamping ridges and canister did function in accordance with their intended use in actual testing.
9. The broth canister identified in the application by reference numeral 24 in FIG. 14A is exactly the canister-cartridge identified in Appendix A as “broth cartridge.jpg” and “broth cartridge bottom.jpg” in Paint Shop Pro images dated June 14, 2000.

10. The scope of the claims is commensurate with the features of broth canister 24 as may be seen by comparing the "broth cartridge.jpg" in Paint Shop Pro images seen in Appendix F and G with the claimed broth canister features.
11. We believe the foregoing is ample and sufficient evidence that the broth container and canister claimed in the above-identified application for patent were reduced to practice and satisfactorily tested to confirm their functioning in accord with their intended purposes during the time period between June and August, 200, well before the date of April 24, 2001.

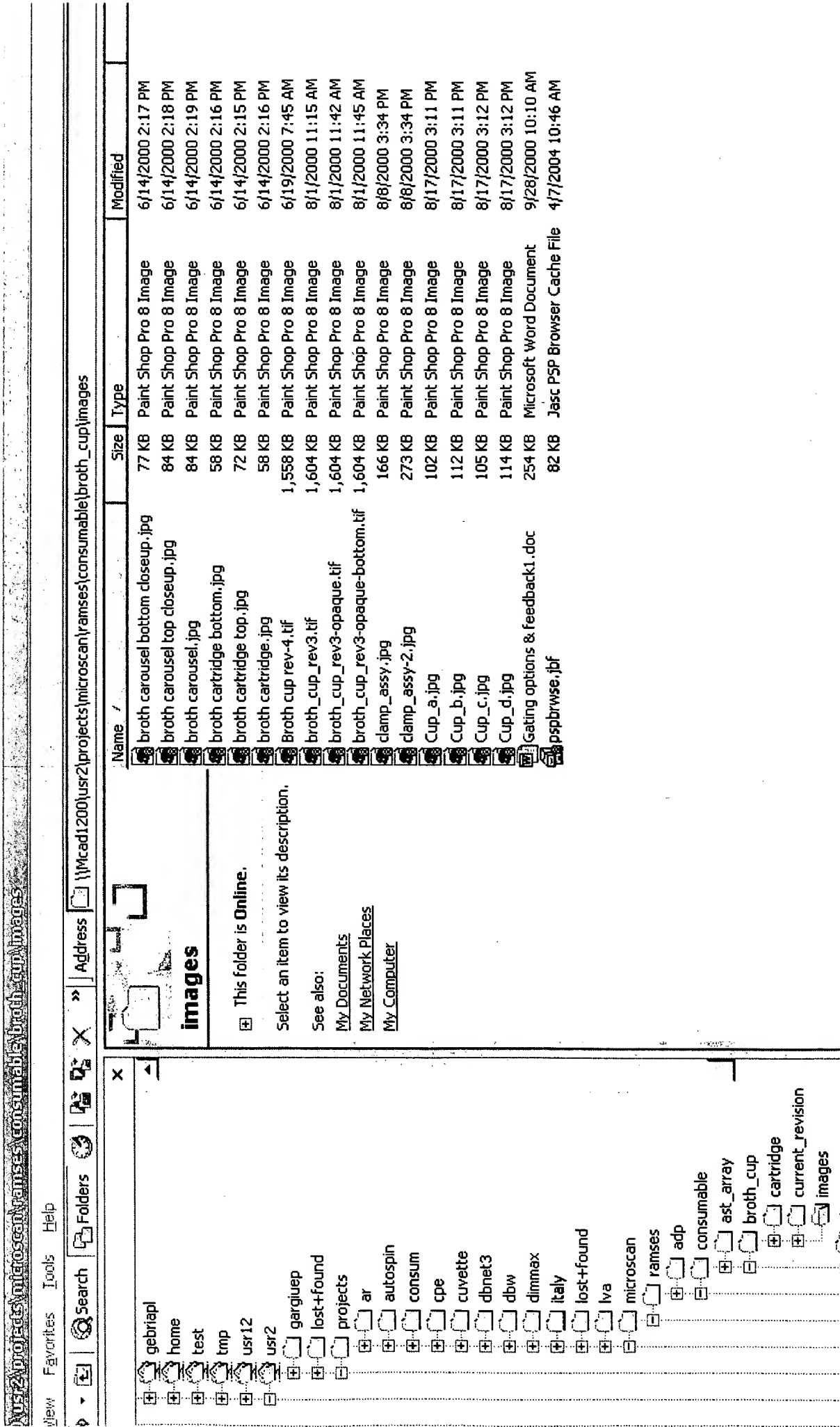
  
John C. Mazza

Sworn to and subscribed before me  
this 20 th day of April, 2004.

  
Notary Public



# Appendix A



## Appendix B



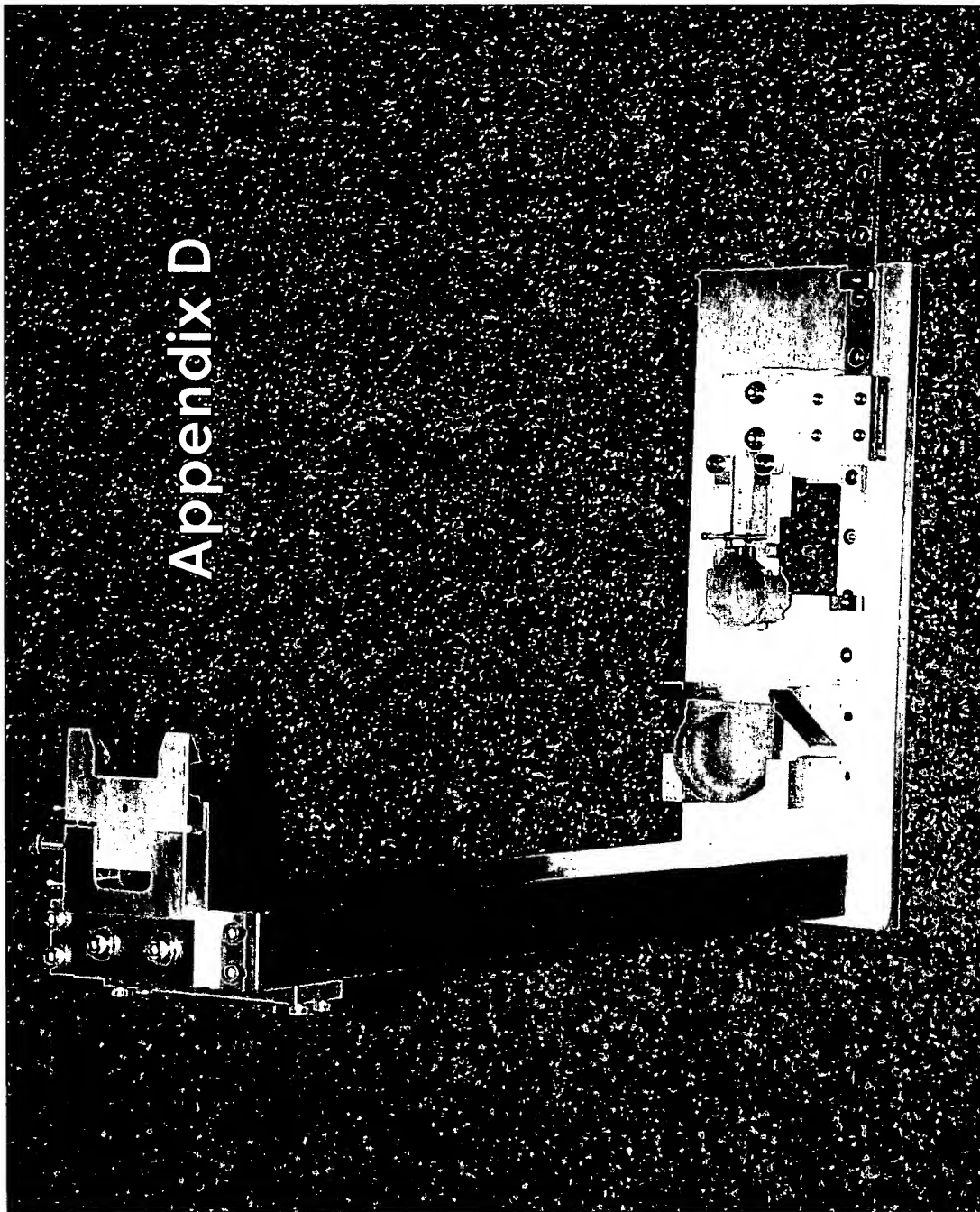
Cup\_a.jpg



Cup\_c.jpg

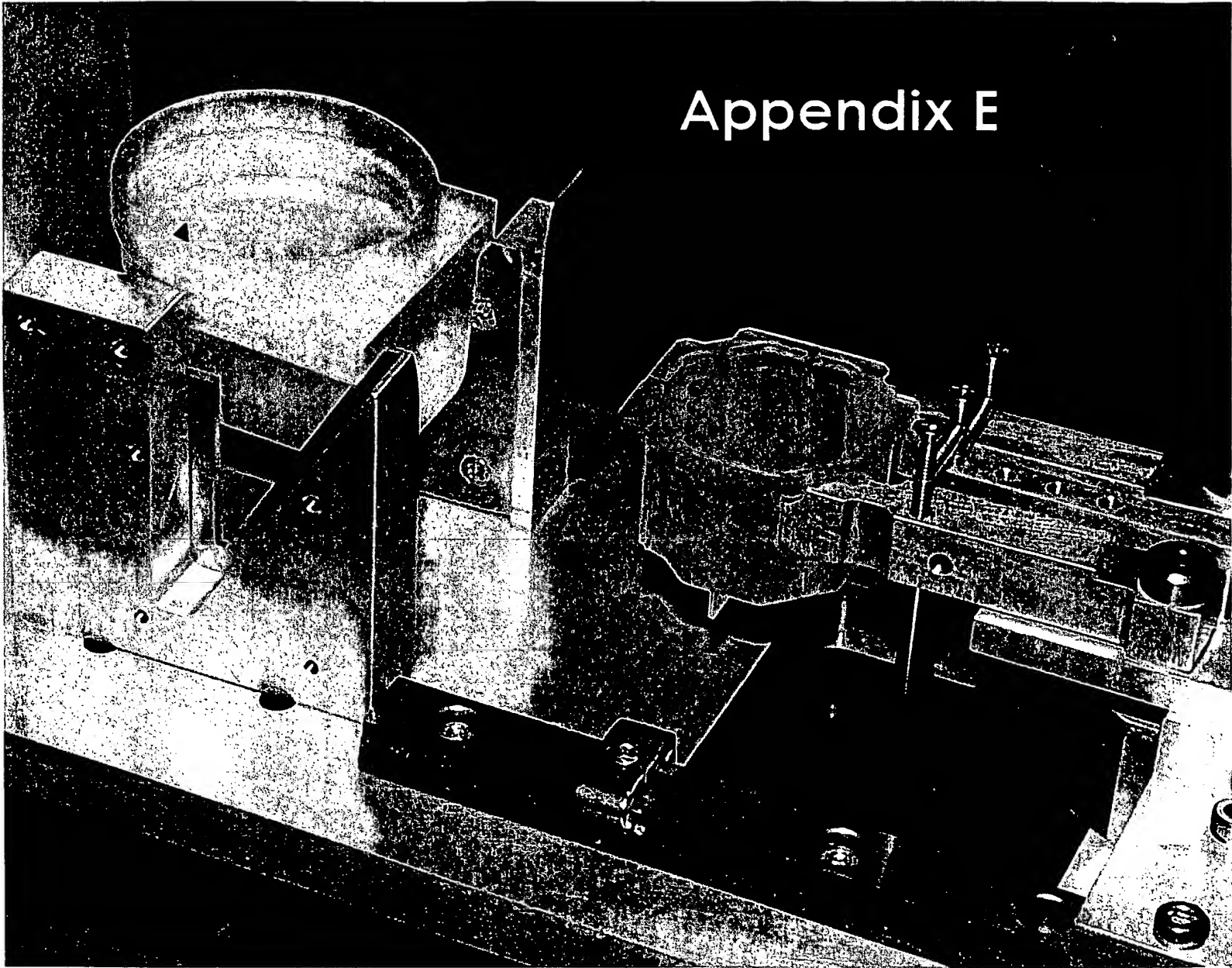


## Appendix D

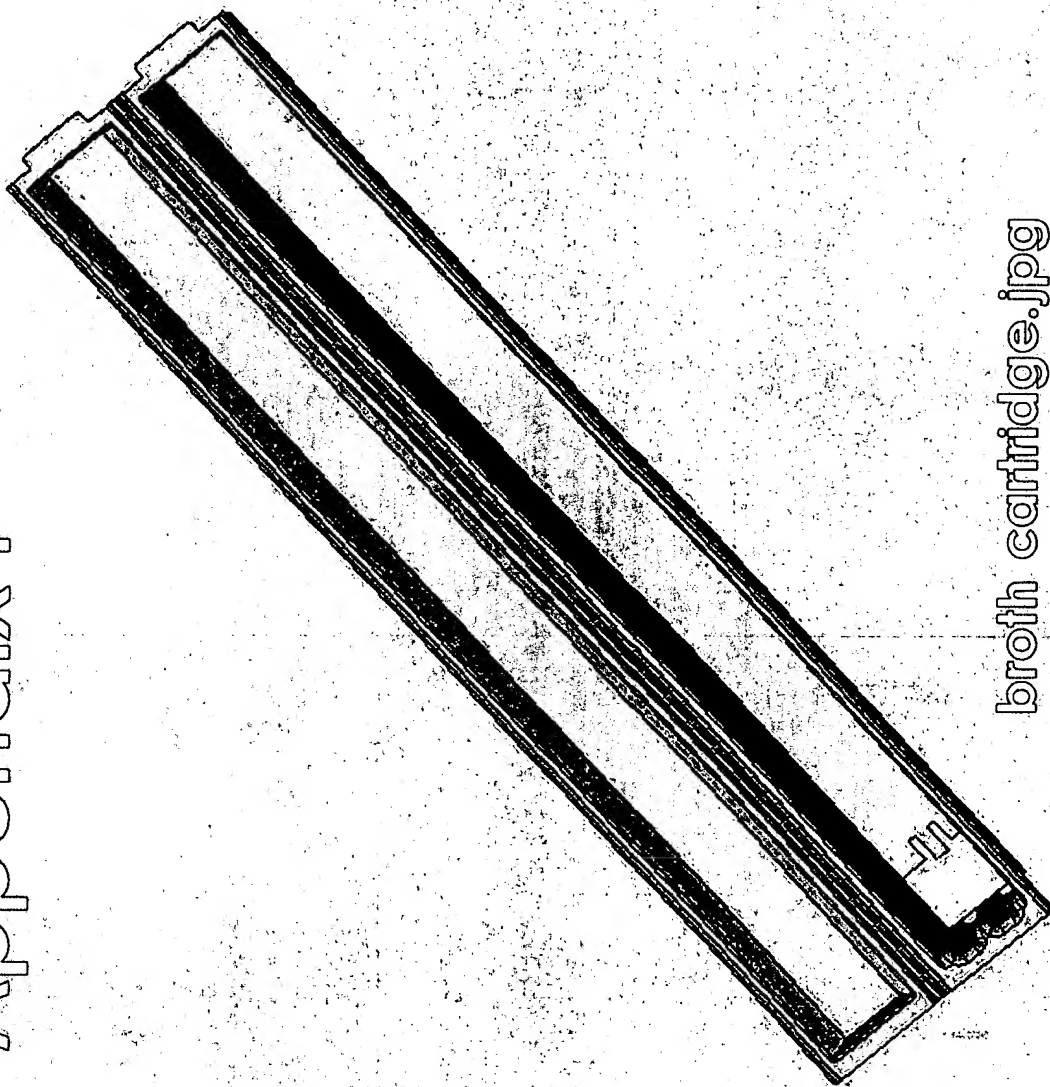




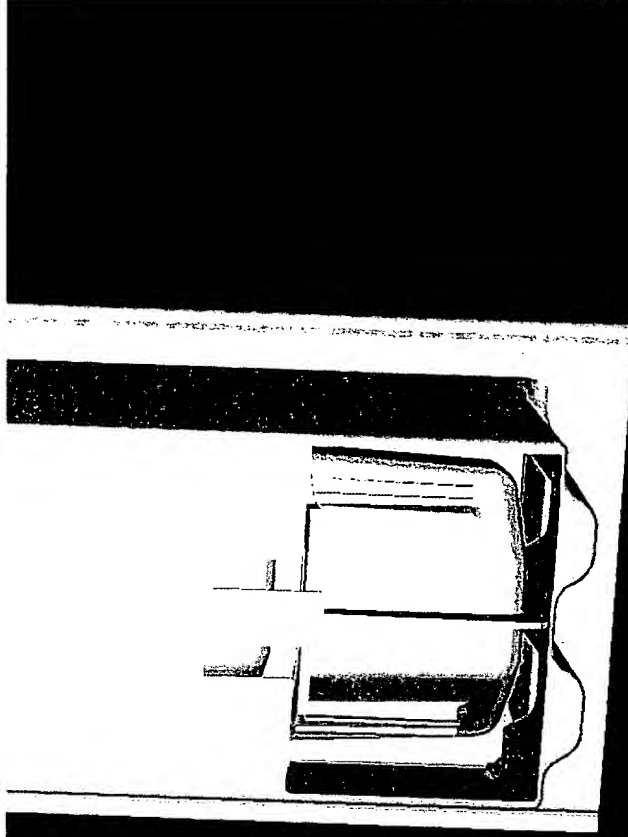
# Appendix E



# Appendix F



broth cartridge.jpg



broth cartridge bottom.jpg

## Appendix G